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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 944 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

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2. To be referred to the Reporter or not?-No.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?—No.

PANCHMAHAL CEMENT COMPANY LTD

Versus

NATVERLAL S PANCHAL

Appearance:

MR AJ SHASTRI for Petitioner

MR RV DESAI for the Respondent.

CORAM : MR.JUSTICE R.BALIA..

Date of decision: 06/03/97

ORAL JUDGEMENT

The petitioner is a Company. Respondent was in employment of the Company. His services were terminated on 16.4.1985. Dispute had arisen as to the nature of termination. After the Conciliation resulted in failure, dispute was referred to Labour Court, Godhra. While the contention of the employer was that on 16.4.1985, after there was an incident of theft in which the respondent-employee was alleged to have been involved, he submitted his resignation in order to save himself from the consequences of his involvement in the said theft and it being a case of employee voluntarily resigning from the services, there was no occasion for the employer to have terminated the services of the respondent and follow the procedure of retrenchment under the Industrial Disputes Act or to resort to disciplinary proceedings to punish him. On the other hand, it was the case of the respondent that he had not resigned from the services, but his signatures were taken forcibly on a blank paper, which is now projected as letter of resignation tendered by the workman. The Tribunal, after noticing the evidence on record, the statement of the workman and other statements and taking into consideration the fact that the writing of the resignation letter is not in the hand of the workman and he has admitted only signature part of it, accepted the contention of the workman that there was no tendering of resignation by him and employer has failed to prove that the workman has, in fact, tendered the resignation in question on that date.

The question whether the workman has tendered resignation or not is primarily a finding of fact, not ordinarily required to be interfered with in a petition under Article 226, which is not an appellate jurisdiction. During the course of argument, it has been urged by the learned counsel for the petitioner that the Tribunal has apparently read something in the statement of the workman which is not there. He had contended that nowhere in his statement, either in affidavit, or cross-examination the workman has denied that he has tendered the resignation and that he has nowhere stated that his signatures were taken on a blank paper forcibly. In support of that contention, learned counsel has relied upon an uncertified copy of the affidavit and cross-examination of the workman. As against this, learned counsel for the workman had pointed out from a certified copy, which was in his file, that, in fact, the workman has clearly stated, in his cross-examination, that he was made to sign on a blank paper by forcible intimidation through four or five persons, but he has not tendered any resignation. In view of this contention, the Court has directed on 3rd March, 1997, to summon the

record of the Labour Court. The record has been received and on perusal, it is clear that the contention of learned counsel for the petitioner in this regard is wholly unfounded. The argument about finding of fact having been vitiated on account of misreading of statement of workman on the basis of uncertified copy is apparently not sustainable. It has clearly been stated by the workman in his statement as under :-

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( Gujarati Version )

Learned counsel for the petitioner on verifying the facts had candidly stated that he has been misled on the basis of uncertified copy of the statement furnished by the petitioner.

Without pursuing the matter any further, whether it was a deliberate part on the part of the petitioner to mislead the Court or was a bona fide mistake on the basis of material with him, suffice it to state in the facts and circumstances of the present case I find no ground to interfere in the Award passed by the Labour Court as there is no error apparent on the face of record nor the circumstances exist, on the basis of which findings of fact recorded by the Labour Court can be said to be vitiated.

Accordingly, the petition fails and it is hereby dismissed with costs. Costs is quantified at Rs.2,000/-. Rule is discharged. Ad interim relief is vacated.

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(apj)